

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3094 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

DIVISIONAL CONTROLLER

Versus

SIDIK NORMOHMAD HERANJA

Appearance:

MR HC RAVAL for Petitioner

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 11/10/1999

ORAL JUDGEMENT

Learned Advocate Mr.Raval is appearing for the petitioner. Though served, the respondent has not appeared before this Court.

The facts of the present case in short are that the respondent was working with the petitioner Corporation as a Driver since more than 17 years. According to the petitioner, on 16.2.1982, respondent was on duty to ply the bus on casual contract from Dhoraji to Bilkha. The workman dishonestly recovered fare from 8

passengers but had not issued any tickets to them and allowed them to travel in the said bus unauthorisedly. The respondent was served with chargesheet for the said misconduct and thereafter he was dismissed from service by the petitioner Corporation. The said dismissal order was challenged by the respondent workman before the Labour Court by filing Reference No. 1358 of 1986. The Labour Court has considered the fact that it was an admitted position on record that the respondent had allowed 8 passengers to travel in his bus. It is also an admitted fact that the respondent had collected fare from those passengers. The Labour Court has come to the conclusion that it was the first incident in the career of the workman and therefore order of punishment of dismissal from service is harsh and disproportionate and therefore Labour Court directed the petitioner Corporation to reinstate the respondent workman with continuity of service but without backwages for the intervening period.

Mr.Raval, the Learned Advocate appearing for the petitioner Corporation has submitted that the Labour Court has in term concluded that the one thing is clear that the workman unauthorisedly allowed the said passengers in his bus by recovering fare and by not accounting for the same. Therefore, he has submitted that if the conclusion of the Labour Court is appreciated in its proper perspective, than it would appear that it was the duty of the Labour Court either to reject the whole reference or to impose some punishment while directing his reinstatement. According to him, denial of backwages cannot be considered to be punishment sufficient in view of the charge levelled against the workman.

I have considered the submissions made by Mr.Raval. On the facts and in the circumstances of the case, I am of the opinion that since the misconduct is found to have been proved against the workman some punishment should be imposed upon the workman while confirming his reinstatement. I am of the opinion that mere denial of backwages cannot be said to be a punishment looking to the misconduct alleged against the workman. I am of the opinion that it would be just and proper to direct the petitioner Corporation to stop 2 annual increments with permanent effect by way of punishment with effect from 1.1.99 so that it may not result into reduction of his pay packet and there may not be any question of recovery pursuant to stoppage of 2 annual increments with future effect.

This Court while admitting this petition has not

granted any interim relief. Therefore, the respondent workman must have been reinstated in service. In view of the passage of time, it would not be just and proper to disturb the findings of reinstatement of workman and punishment of stoppage of two increments would be sufficient looking to the misconduct alleged against the workman. Accordingly, this petition is partly allowed. While confirming the award of the Labour Court, the petitioner Corporation is directed to stop 2 annual increments of the respondent workman with future effect from 1.1.99. Rule is made absolute accordingly. No costs.

vyas